YONG SIEW AGIING

v.

THE OWNERS AND THE PERSONS INTERESTED IN THE VESSEL "ML SAGA 86" & ORS

COURT OF APPEAL, PUTRAJAYA
MOKHTAR SIDIN JCA
MOHD GHAZALI YUSOFF JCA
NIK HASHIM JCA
[CIVIL APPEAL NO: Q-02-03-99]
21 OCTOBER 2004

CIVIL PROCEDURE: *Administration of estates - Letter of administration - Whether conferred upon administratrix capacity to sue on tort in respect of injury and death suffered by deceased*

CIVIL PROCEDURE: *Administration of estates - Letter of administration with schedule of property attached - Nature and importance of such list - Schedule of assets annexed to grant of letters of administration did not include claim by administratrix - Whether list may be amended to include such claim subsequent to issue of letter of administration - Whether such amended list retrospective in nature*

CIVIL PROCEDURE: *Res Judicata - Finality of earlier decision - Issue raised by way of application dismissed in earlier litigation - No appeal against such dismissal - Fresh suit for declaratory relief in respect of same issue - Whether such suit ought to be struck out*

On 20 April 1987, the appellant was issued with the grant of the Letters of Administration ('the grant of LA') to administer the estate of the deceased. On 18 June 1987, the appellant commenced an Admiralty action in Rem and in Personam ('the 1987 action') against the respondent in her capacity as the administratrix of the estate of the deceased. The action was in respect of, *inter alia*, damages for personal injuries caused to the deceased. However the grant of LA did not state the said claim for damages as an asset. Judgments in default were subsequently entered against the 2nd to 6th respondents. About five years later, the 2nd to 6th respondents filed an application to strike out the 1987 action on the ground that the appellant had no right of action under the grant of LA. On 4 July 1994, on an application by the appellant, the Probate Officer added as an

asset the "Action for damages under the Civil Law Act 1956" to the list of assets annexed to the grant upon a declaration made by the appellant in a further affidavit. On 29 August 1994, the High Court dismissed the respondent's application to strike out the 1987 action after hearing full arguments on the issue whether the appellant had the right to bring the action. There was no appeal filed by the respondent against that decision. On 6 March 1996, upon assessment of damages after hearing evidence adduced by both parties, the senior assistant registrar (SAR) allowed RM145,000 as general damages and RM6,000 as special damages, interest thereon and costs. On 28 May 1996, the High Court dismissed the respondent's appeal against the decision of the SAR on the assessment of damages. At the said hearing, the respondent contended that the default judgments were a nullity because the appellant had no right to bring the action. The High Court held that the respondent was precluded from raising it, *inter alia*, on the ground that they had not appealed against its decision on 29 August 1994. On 19 June 1996, the respondent's application to the Court of Appeal for leave to appeal was dismissed. On 15 September 1997, the respondents filed a suit applying to, *inter alia*, declare, that the interlocutory judgments in default and the assessment of damages entered in the 1987 action constituted a nullity. The appellant applied to strike out the suit under O. 18 r. 19 and O. 92 r. 4 of the RHC, *inter alia*, on the ground that the suit was an abuse of the process of the court. The Judicial Commissioner ('JC') however dismissed the appellant's application. The JC ruled that the default judgments were a nullity because the court lacked jurisdiction. The judgments were obtained in contravention of s. 17(a) of the Administration of Estates Ordinance (Cap 80) Sarawak ('the Ordinance') in that the claim for damages was not included in the grant of LA and, as such, the appellant was not vested with the right to sue. The JC also ruled that the amendment to include the right to sue in the list of assets annexed to the grant in 1994 had no retrospective effect. The appellant thus appealed.

Held (allowing the appeal with costs)
Per Nik Hashim JCA delivering the judgment of the court:

[1] The appellant brought the action as administratrix of the estate of her late husband Hou Bok Chai. She was lawfully issued with the Letters of Administration on 20 April 1987. On that date she became possessed with the official grant of representation issued to the representative of a person dying intestate. By virtue of the said Letters of Administration, the appellant became possessed with statutory powers

to bring actions in tort by ss. 7 and 8 of the Civil Law Act 1956 in respect of the injury and death caused to the deceased. The appellant was entitled at all material times as administratrix of her deceased husband to enforce the statutory rights vested in her by virtue of ss. 7 and 8 of the Civil Law Act 1956. Since the appellant had the legal capacity to bring the action at the material time, the default judgments which were entered regularly, were indeed not a nullity as contended by the respondent. (pp 495 g-h, 496 a-g & 497 a)

[2] The learned JC had erred in law in failing to appreciate the true object or purpose of the inventory or schedule of property or list annexed to the grant. The inventory or schedule of property or list of assets annexed to the grant provides a description of the assets to be administered and is important for the purpose of assessment of the true value of the estate and the estate duty payable or making provision for security. The failure to include the claim for damages in the list of assets annexed to the grant was not fatal but curable by amendment. The amendment to the list on 4 July 1994 dated back to the date of the original issue of the grant of LA, *ie*, 20 April 1987. The amended list had to be read as though the amendment had been inserted from the beginning. The JC erred in law when he held that the amendment to the Letters of Administration on 4 July 1994 did not have retrospective effect to the date of the grant on the ground that the claim was already barred. (pp 497 b-h & 498 a-f)

[3] The JC had erred when he dismissed the appellant's application with costs. He ought to have held that the respondent was precluded by the doctrines of *res judicata* and *functus officio* from re-agitating the nullity issue on the default judgments that they were trying to bring up in their suit. Clearly, the suit amounted to an abuse of the process of the court. (p 500 b-c)

*[**Bahasa Malaysia** Translation Of Headnotes*

Pada 20 April 1987, perayu telah diberikan Surat Kuasa Mentadbir ('SKM') bagi mentadbir harta pusaka si mati. Pada 18 Jun 1987, perayu memulakan tindakan Admiralti in Rem dan in Personam ('tindakan 1987') terhadap responden-responden dalam kapasitinya sebagai pentadbir harta pusaka si mati. Tuntutan itu, antara lain, adalah untuk ganti rugi bagi kecederaan badan yang dialami oleh si mati. Bagaimanapun, SKM tidak menyatakan tuntutan ganti rugi itu sebagai suatu aset. Penghakiman ingkar kemudian

diperolehi terhadap responden kedua hingga keenam. Lebih kurang lima tahun kemudian, responden kedua hingga keenam memfail permohonan bagi membatalkan tindakan 1987 atas alasan bahawa perayu tidak mempunyai kausa tindakan di bawah KSM. Pada 4 Julai 1994, atas permohonan perayu, Pegawai Probet menambah "Tuntutan untuk ganti rugi di bawah Akta Undang-Undang Sivil 1956" sebagai satu lagi aset kepada senarai aset yang dikepilkan kepada SKM. Pada 29 Ogos 1994, Mahkamah Tinggi menolak permohonan responden untuk membatalkan tindakan 1987 selepas mendengar hujah-hujah atas isu sama ada perayu mempunyai hak untuk membawa tindakan tersebut. Responden tidak merayu terhadap keputusan tersebut. Pada 6 Mac 1996, semasa menilai ganti rugi selepas mendengar keterangan pihak-pihak, Penolong Kanan Pendaftar ('PKP') membenarkan RM145,000 sebagai ganti rugi am dan RM 6000 sebagai ganti rugi khas, faedah serta kos. Pada 28 Mei 1996, Mahkamah Tinggi menolak rayuan responden terhadap keputusan PKP berkaitan penilaian ganti rugi. Di pendengaran tersebut, responden menyatakan bahawa penghakiman ingkar adalah suatu ketaksahan oleh kerana perayu tiada hak untuk membawa tindakan. Mahkamah Tinggi memutuskan bahawa responden telah terhalang dari membangkitkan isu tersebut atas alasan, antara lain, bahawa mereka tidak merayu terhadap keputusan 29 Ogos 1994 itu. Pada 19 Jun 1996, permohonan responden ke Mahkamah Rayuan bagi mendapatkan izin merayu telah ditolak. Pada 15 September 1997, responden memfail tindakan, memohon antara lain untuk mengisytiharkan bahawa penghakiman ingkar dan penilaian ganti rugi interlokutori di dalam tindakan 1987 adalah suatu ketaksahan. Perayu memohon untuk membatalkan tindakan ini di bawah A. 18 k. 19 dan A. 92 k. 4 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') atas alasan, antara lain, bahawa tindakan adalah suatu salah guna proses mahkamah. Pesuruhjaya Kehakiman ('PK') memutuskan bahawa penghakiman ingkar adalah suatu ketaksahan oleh kerana mahkamah tidak mempunyai bidang kuasa. Menurut PK, penghakiman telah diperolehi secara yang melanggar s. 17(a) Ordinan Pentadbiran Pusaka (Cap 80) Sarawak ('Ordinan'), dalam ertikata tuntutan untuk ganti rugi tidak tersenarai di dalam SKM, dan kerana itu perayu tidak diberi kuasa untuk mendakwa. PK juga memutuskan bahawa pindaan pada tahun 1994 bagi memasukkan hak untuk mendakwa di dalam senarai aset yang dikepil kepada SKM tidak mempunyai kesan retrospektif. Perayu merayu.

Diputuskan (membenarkan rayuan dengan kos)
Per Nik Hashim HMR menyampaikan penghakiman mahkamah:

[1] Perayu membuat tuntutan selaku administratrix bagi pusaka mendiang suaminya Hou Bok Chai. Beliau telah dengan sahnya diberikan SKM pada 20 April 1987. Pada tarikh tersebut beliau mendapat hak milik rasmi untuk mewakili, yang diberi kepada wakil seseorang yang mati tanpa berwasiat. Berdasarkan SKM tersebut, perayu mempunyai hak statutori untuk membuat tuntutan tort di bawah ss. 7 dan 8 Akta Undang-Undang Sivil 1956 berkaitan kecederaan dan kematian yang dialami oleh si mati. Perayu selaku administratrix kepada mendiang suaminya berhak pada setiap masa untuk melaksanakan hak-hak statutori yang diberikan kepadanya berdasarkan kepada ss. 7 dan 8 Akta Undang-Undang Sivil 1956. Oleh kerana perayu mempunyai kapasiti undang-undang untuk membuat tuntutan pada waktu material, penghakiman ingkar, yang dimasukkan secara sah, bukanlah suatu ketaksahan seperti yang dikatakan oleh responden.

[2] Yang arif Pesuruhjaya Kehakiman silap di sisi undang-undang kerana gagal memahami objek atau tujuan sebenar inventori atau jadual harta yang dikepil kepada SKM. Inventori atau jadual harta atau senarai aset yang dikepil kepada SKM adalah deskripsi tentang nilai sebenar aset yang perlu ditadbir dan ia penting bagi penilaian nilai sebenar pusaka dan cukai harta pusaka yang perlu dibayar atau untuk dijadikan jaminan. Kegagalan memasukkan tuntutan ganti rugi ke dalam senarai aset yang dikepilkan kepada SKM tidak memudaratkan tetapi boleh dibetulkan melalui pindaan. Pindaan kepada senarai yang dibuat pada 4 Julai 1994 berkesan hingga ke tarikh asal pengeluaran Surat Kuasa Mentadbir, iaitu 20 April 1987. Senarai pindaan harus dibaca seolah-olah pindaan telah dibuat sejak awal lagi. PK telah silap di sisi undang-undang apabila beliau mengatakan pindaan kepada Surat Kuasa Mentadbir pada 4 Julai 1994 tidak mempunyai kesan retrospektif sehingga ke tarikh SKM itu atas alasan bahawa tuntutan sudah pun dibatasi had masa.

[3] PK telah silap apabila beliau menolak permohonan perayu dengan kos. Beliau sepatutnya mendapati bahawa responden telah tersingkir oleh doktrin *res judicata* dan *functus officio* dari membangkitkan semula isu ketaksahan penghakiman ingkar yang cuba dibuat dalam guamannya itu. Jelas, bahawa guaman tersebut adalah suatu salah guna proses mahkamah.

Case(s) referred to:
Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***
Khoo Kay Hock v. EJ Ketting & Ors [1978] 2 MLJ 57 ***(refd)***
King Hock Ching v. Ung Siew Pung [1974] 2 MLJ 16 ***(refd)***
Ong Ah Ngim v. Lan Kiok Kia [1956] SCR 7 ***(refd)***
Tenaga Nasional Bhd v. Prorak Sdn Bhd [2000] 1 CLJ 553 CA ***(refd)***

Legislation referred to:
Administration of Estates Ordinance (Cap 80) Sarawak, ss. 2, 15, 16(1), 17(a)
Probate and Administration Act 1957, ss. 7(2), 8(1)
Rules of the High Court 1980, O. 18 r. 19, O. 92 r. 4

For the appellant - Mekanda Singh Sandhu (Satinder Singh Sandhu); M/s Sandhu & Co
For the respondents - KY Lin; M/s Kadir, Wong, Lin & Co

[Appeal from High Court, Miri; Suit No: 22-38-97 (MR)]

Reported by Andrew Christopher Simon

JUDGMENT

Nik Hashim JCA:

Introduction

The appellant (the defendant in the court below) applied to strike out the respondents' (the plaintiffs in the court below) suit, namely, Miri High Court Suit No. 22-38-97 (the suit) under O. 18 r. 19 and O. 92 r. 4 of the Rules of the High Court 1980 (the RHC), *inter alia*, on the ground that it was an abuse of the process of the court. The application was dismissed and hence, this appeal.

On 29 September 2004, we allowed the appeal and we now give our reasons.

Background

The following facts are not in dispute:

On 18 June 1987 the appellant commenced an Admiralty action in Rem and in Personam No. MR 1 of 1987 (the 1987 action) against the respondents in her capacity as administratrix of the estate Hou Bok Chai (deceased) claiming, *inter alia*, for damages for personal injuries caused to the deceased.

On 20 April 1987, prior to the filing of the 1987 action, the appellant had applied for and was issued with the grant of the Letters of Administration to administer the estate of the deceased, but the grant did not state the said claim for damages as an asset.

On 13 July 1988, an interlocutory judgment in default of appearance for damages to be assessed was entered against the 3rd and 4th respondents, and on 17 February 1989 a similar order was entered against the 2nd, 5th and 6th respondents.

On 19 May 1994, the 2nd to 6th respondents filed an application to strike out the 1987 action on the ground that the appellant had no right of action under the grant of the Letters of Administration.

On 4 July 1994, on an application by the appellant, the Probate Officer added as an asset the "Action for damages under the Civil Law Act 1956" to the list of assets annexed to the grant upon a declaration made by the appellant in a further affidavit.

On 29 August 1994, the High Court dismissed the respondents' application to strike out the 1987 action after hearing full arguments on the issue whether the appellant had the right to bring the action. However, there was no appeal filed by the respondents against that decision.

On 6 March 1996, upon assessment of damages after hearing evidence adduced by both parties, the senior assistant registrar (SAR) allowed RM145,000 as general damages and RM6,000 as special damages, interest thereon and costs.

On 28 May 1996, the High Court dismissed the respondents' appeal against the decision of the SAR on the assessment of damages. At the said hearing, the respondents contended that the default judgments were a nullity because the appellant had no right to bring the action. The High Court held that the respondents were precluded from raising it, *inter alia*, on the ground that they had not appealed against its decision on 29 August 1994.

On 19 June 1996, the respondents applied to this court by way of a notice of motion for leave to appeal against the above decision. At the hearing on 21 July 1997, the respondents re-agitated the argument that the default judgments were a nullity because the appellant had no right to bring the action. After hearing submissions of both counsel on the issue of nullity, the leave to appeal was refused.

On 15 September 1997, the respondents filed the suit applying for the following declaratory reliefs, namely, that the interlocutory judgments in default and the assessment of damages entered in the 1987 action are a nullity.

On 26 November 1997, the appellant applied for an order to strike out the suit under O. 18 r. 19 and O. 92 r. 4 of the RHC, *inter alia*, on the ground that it was an abuse of the process of the court.

On 30 November 1998, the learned judicial commissioner (the learned JC) dismissed the appellant's application. The appellant, being dissatisfied with the decision, appealed to this court.

JC's Decision

In his grounds of judgment, the learned JC ruled that the default judgments were a nullity because the court lacked jurisdiction as the judgments were obtained in contravention of s. 17(a) of the Administration of Estates Ordinance (Cap 80) Sarawak (the Ordinance) in that the claim for damages was not included in the grant of the letters of administration and as such, the appellant was not vested with the right to sue. He also ruled that the amendment to include the right to sue in the list of assets annexed to the grant in 1994 had no retrospective effect and cited *Badiaddin bin Mohd Mahidin & Anor v. Arab Malaysian Finance Berhad* [1998] 2 CLJ 75; *Ong Ah Ngim v. Lan Kiok Kia* [1956] SCR 7; and *King Hock Ching v. Ung Siew Pung* [1974] 2 MLJ 16, in support of his decision.

Contentions

Before us, learned counsel for the appellant submitted that in bringing the claim for damages for injury and death caused to the deceased, the appellant did not contrave any statutory prohibition because:

(i) the Ordinance does not contain any provision prohibiting the bringing of an action in respect of a claim unless the claim is included in the list of assets annexed to the grant;

(ii) the failure to include the claim for damages in the said list was immaterial in that the appellant, being the lawfully appointed administratrix of the deceased, was already vested with the right to sue for claim of damages by virtue of ss. 7 and 8 of the Civil Law Act 1956 (the Act), and therefore, had the title to sue;

(iii) the list of assets annexed to the grant does not affect the title as it is important for the purposes of assessment of the estate duty payable and for making provision for security; and

(iv) alternatively, the failure to include the claim for damages was not fatal because the omission was cured as it was added to the list in accordance with s. 16(1) of the Ordinance and the addition relates back to the date of the grant.

Findings

In our judgment, there was much merit in the appellant's submission. We agreed with the appellant that *Badiaddin*'s case was not applicable. From a perusal of ss. 15 and 17 of the Ordinance, it is clear that they do not impose any prohibitions unlike in *Badiaddin*'s case which was concerned with an order of sale made in violation of a prohibition imposed by s. 13 of the Malay Reservations Enactment which provides:

> No Malay holding shall be attached in execution of a decree or order of any court unless the suit or decree in respect of which such order was made was instituted before the commencement of this Enactment.

Section 15 of the Ordinance provides that upon the issue of the letters of administration the assets set out in the list shall vest in the administrator for the purpose of administration. Whereas s. 17 of the Ordinance imposes upon the administrator duties which includes the duty to collect and recover all the property, assets and effects covered by the grant. Both these sections concern the administration of estates of the deceased persons. They do not prohibit the administrator from dealing with any asset not included in the list annexed to the grant. None of the provisions in the Ordinance contains such a prohibition. Since there was no defiance of any statutory prohibition, the instant case was not exceptional that would justify the exercise of the inherent jurisdiction to set aside the default judgments, the final orders which the appellant had been granted (see *Tenaga Nasional Berhad v. Prorak Sdn Bhd* [2000] 1 CLJ 553).

It was noted in the title to the action and in the statement of claim that the appellant had brought the action as administratrix of the estate of her late husband Hou Bok Chai, and that she was lawfully issued with the Letters of Administration by the Probate Officer Baram on 20 April 1987. It is clear that as at that date she became possessed with the official grant of representation issued to the representative of a person dying intestate (see interpretation s. 2 of the Ordinance). And by virtue of the said Letters

of Administration, the appellant became possessed with statutory powers to bring actions in tort by ss. 7 and 8 of the Act in respect of the injury and death caused to the deceased. Under s. 7 she had the right to sue for compensation for the loss of support and reasonable expenses occasioned by the death of the deceased for the benefit of the dependants of the deceased. It is expressly provided in s. 7(2) that such an action shall be brought by and in the name of the executor or the administrator of the person deceased. By s. 8(1) on the death of any person all causes of action subsisting against or vested in him shall survive against, or as the case may be, for the benefit of his estate with the exception of the causes of action for defamation, seduction, inducing one spouse to leave or remain apart from another and adultery.

Thus, in the circumstances, the appellant was entitled at all material times as administratrix of her deceased husband to enforce the statutory rights vested in her by virtue of ss. 7 and 8 and claim for:

(1) damages under s. 7 for the benefit of herself and the children of the deceased, and

(2) damages under s. 8 for the benefit of the estate of the deceased.

In the Federal Court case of *Khoo Kay Hock v. E.J. Ketting & Ors* [1978] 2 MLJ 57, the plaintiff took out a writ against the defendant claiming damages for negligently causing the death of the deceased. One of the objections taken by the defendant was that the plaintiff had no title to sue because the schedule of assets annexed to the grant did not include the claim. In rejecting the objection, His Lordship Raja Azlan Shah FJ (as His Royal Highness then was) at p. 58 G-H said:

> … The endorsement of the writ that the plaintiff is bringing the action in a representative capacity as administrator is the crucial matter …

Here it is worthy of note that although that case concerned the Probate and Administration Act 1959 (Act 97) which is applicable to West Malaysia, the decision in that case however could be relied upon in deciding the present case which involved the Ordinance, for both Act 97 and the Ordinance serve a common purpose, that is, to provide for the proper administration of the estates of deceased persons.

Therefore, we were of the view that since the appellant had the legal capacity to bring the action at the material time, the default judgments which were entered regularly, were indeed not a nullity as contended by the respondents.

From his judgment we noticed with regret that the learned JC had erred in law in failing to appreciate the true object or purpose of the inventory or schedule of property or list annexed to the grant. The assets listed in the grant are vested in the administrator upon the issue of letters of administration for the purposes of administration. Section 15 of the Ordinance states:

> The issue by a Probate Officer of probate or letters of administration shall vest in the executor or administrator named therein, and if more than one, jointly, for the purpose of administration, all the property, estate and effects of the deceased set out in the list annexed to the grant and all property exempted under subsection (1) of section 4.

The inventory or schedule of property or list of assets annexed to the grant provides a description of the assets to be administered and is important for the purpose of assessment of the true value of the estate and the estate duty payable or making provision for security. In this matter, it is relevant to note that s. 5(a) of the Ordinance provides that grant of letters of administration is not to be issued until an affidavit and **inventory in the prescribed form of the property and assets of the deceased is sworn and proper Estate Duty is paid** (s. 5(b)). Moreover, s. 16(1) of the Ordinance empowers the Probate Officer to add an asset omitted from the inventory after it is declared by a further affidavit and **after payment of such further duty and interest as may be due thereon.** (emphasis added).

In *Khoo Kay Hock, supra*, His Lordship Raja Azlan Shah FJ (as His Royal Highness then was) said at p. 58:

> The schedule of property to the grant of letters of administration does not in law affect the title of the personal representative of a deceased person to institute legal proceedings. It does not affect him one way or another. It is only a description of the property to be administered and not a description of his status to sue …
>
> The object of the law relating to the collection of estate duty is a fiscal measure enacted to secure revenue for the State on certain classes of property on death. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of this law are conceived in the interest of revenue and once that object is

achieved according to law, the party founding his claim on the schedule will not be defeated on the ground of the initial defect in the said schedule. We indorse what was said by Smith J in *Chua Chee Chor v. Chua Kim Yong & Ors., supra*, and reproduce it here:

> The principal object of the schedule to the grant of Letters of Administration appears to be for the purpose of ensuring that correct security is given. It does not prove the deceased's title to the property scheduled.

With regard to the alternative submission, we agreed with Mr. Mekanda Singh Sandhu, learned counsel for the appellant that the failure to include the claim for damages in the list of assets annexed to the grant was not fatal but curable by amendment. The amendment to the list on 4 July 1994 dated back to the date of the original issue of the grant of the Letters of Administration, ie, 20 April 1987, and as such, the amended list must be read as though the amendment had been inserted from the beginning.

In the instant case, the Letters of Administration declares:

> BE IT KNOWN that **at the date hereunder written**, the Letters of Administration of all the within mentioned property of Hou Bok Chai … were granted under Section 3 of the Administration of Estates Ordinance to YONG SIEW NGIING (F) K. 131206, wife of deceased, housewife … (emphasis added)

Thus, with the grant of the Letters of Administration, the appellant became vested with the authority to sue for damages as from 20 April 1987 and hence, she was properly clothed with the authority to bring the action against the respondents. In our view, the learned JC had erred in law when he held that the amendment to the Letters of Administration on 4 July 1994 did not have retrospective effect to the date of the grant on the ground that the claim was already barred. For the above reasons, it was therefore not justified to allow the respondents to attack the default judgments.

Learned counsel for the respondents, Mr. K.Y. Lin, referred us to two Sarawak cases, namely: *Ong Ah Ngim* and *King Hock Ching, supra*, to support his argument that since the appellant had obtained the default judgments in 1988 and 1989 and only amended the Letters of Administration to include the right to sue for damages in 1994, the court had no jurisdiction to enter judgment in default because in 1988 and 1989, the appellant was not vested with the right to sue for damages and therefore, the amendment has no retrospective effect.

With respect, we were unable to agree with him. In fact, *Ong Ah Ngim* was in the appellant's favour. Rodley J in that case, emphasized particularly on the justice of the case by allowing an adjournment so that the plaintiff could amend the list of assets annexed to the grant and hence to have the title to sue, by inserting Lots 526 and 527 therein under s. 16 of the Ordinance which provides *inter alia* that any asset omitted from the inventory required by section 5(a) may be declared by a further affidavit. Before granting the adjournment, the learned judge aptly said:

> In my view it would be a denial of justice to dismiss this action for want of title.

In *King Hock Ching, supra,* the plaintiff was suing in the capacity of an administrator of his late mother's estate. The letters of administration were issued in Singapore. The defendant sought to set aside the writ for nullity. The issues before the court were:

(a) whether the Singapore letters of administration confer title upon the plaintiff to sue as administrator of the estate of the deceased without anything more being done in respect of it; and

(b) whether a subsequent authentication of these letters of administration by a probate officer under s. 14 of the Ordinance confers such title upon the plaintiff, and if so, with effect from when?

Tan Chiaw Thong J held:

(1) the Singapore grant by itself conferred no title on the plaintiff to institute the action in this case as administrator of the estate of the deceased and the writ was therefore a nullity;

(2) an authentication made under s. 14(1) of the Ordinance has the effect of a grant by the probate officer in respect of the assets of the deceased specified in the schedule to such authentication. Such authentication took effect from the day on which it was made and has no retrospective effect.

As the authentication here took place after the institution of proceedings in the case, the plaintiff had no title to sue.

To our mind, *King Hock Ching, supra,* is distinguishable on facts and therefore not applicable to the instant case. That case concerned a foreign grant under s. 14 which requires authentication by the Probate Officer before the grant can be effective, whereas the case before us, concerned the grant of probate or letters of administration under s. 15 where such authentication is not a condition before the issue of the grant.

Conclusion

Finally, on the facts of this case, we conclude by saying that the learned JC had erred when he dismissed the appellant's application with costs. He ought to have held that the respondents were precluded by the doctrines of *res judicata* and *functus officio* from re-agitating the nullity issue on the default judgments that they were trying to bring up in their suit. Clearly, the suit amounted to an abuse of the process of the court.

Accordingly, we allowed the appeal with costs here and below. We ordered that the respondents' suit be struck out and the deposit paid into court to be refunded to the appellant.